(9)

No. 95-1717

In the Supreme Court of the United States

OCTOBER TERM, 1996

UNITED STATES OF AMERICA, *PETITIONER*

v.

DAVID W. LANIER, *RESPONDENT*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF *AMICI CURIAE* AND BRIEF *AMICI CURIAE* OF THE SOUTHERN POVERTY LAW CENTER, THE NATIONAL ASSOCIATION OF HUMAN RIGHTS WORKERS AND THE CALIFORNIA WOMEN'S LAW CENTER IN SUPPORT OF PETITIONER

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The Southern Poverty Law Center, the National Association of Human Rights Workers and the California Women's Law Center ("*amici*") hereby respectfully move for leave to file the attached brief *amici curiae* in this case. The consent of the Solicitor General, attorney for the petitioner, has been obtained. The consent of the attorney for respondent was requested but refused.

The interest of *amici* in this case arises from the fact that they are civil rights organizations that consistently promote the vigorous application of federal civil rights law.

The brief *amici* propose to file supplements the arguments raised by the Solicitor General. Specifically, the brief lends additional support to the Solicitor General's position by providing an analysis of the breadth of the constitutionally protected right to bodily integrity, the purpose of 18 U.S.C. 242 to remedy abuses of state power, and the federal

government's significant and continuing interest in redressing the increasing amount of violence perpetrated against women.

The attached brief also responds to the arguments likely to be raised by respondent. For example, in his argument before the en banc Court of Appeals as well as in response to the Solicitor General's petition for writ of certiorari filed with this Court, respondent focused on the potential for state law punishment of his abusive acts. Respondent failed to recognize that federal civil rights law punishes state officials like himself who misuse their position to deprive others of their constitutional rights. Respondent also misconstrued this Court's precedent to mean that the constitutional right to bodily integrity does not include the right to be free from sexual assault, one of the most blatant and serious invasions of bodily integrity. Because it is likely that respondent will continue to pursue this same reasoning before this Court, *amici* believe that this brief will provide the Court with a more complete argument concerning the constitutional protections under 18 U.S.C. 242.

In light of the foregoing, *amici* believe that the attached brief will assist the Court in its deliberations in this case and, therefore, respectfully urge the Court to permit the brief to be filed.

Respectfully submitted,

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INTEREST OF *AMICI CURIAE*

The Southern Poverty Law Center, the National Association of Human Rights Workers and the California Women's Law Center, with the consent of the Solicitor General, appear as *amici curiae* to provide the Court with an analysis of the application of federal criminal civil rights law. *Amici* are three civil rights organizations that provide educational, legal and social services to diverse communities.

Founded in 1971, the Southern Poverty Law Center ("The Center") is an internationally recognized leader in the area of civil rights litigation. The Center has litigated numerous pioneering civil rights cases on behalf of women, minorities, factory workers, poor people in need of health care, mentally ill persons, children in foster care, prisoners facing barbaric conditions of confinement and many other victims of injustice. The Center has litigated and won five landmark civil rights lawsuits before this Court, including one of the first successful sex discrimination cases against the federal government, *Frontiero v. Richardson*, 411 U.S. 677 (1973).

The National Association of Human Rights Workers is one of the oldest civil rights organizations in the United States. The Association is composed of individuals who are engaged in human and civil rights work as professionals. Over the last several decades, this national network of human relations officials, educators, attorneys and community leaders has achieved international recognition for its pursuit of civil rights for all people.

The California Women's Law Center is a non-profit service organization established in 1989 to secure and advance the legal status of women in a wide range of areas, including employment, education, health care, child care, reproductive rights, family law and gender-based violence. The Women's

Law Center is widely known for its legal and social efforts to promote gender equality.

Amici have a substantial interest in demonstrating the applicability of federal legislation to criminal deprivations of civil rights by government officials who wrongfully use the power of their positions to sexually assault women.

SUMMARY OF ARGUMENT

Section 242, Title 18, of the United States Code prohibits the willful "deprivation of *any* rights, privileges, or immunities secured by the Constitution or laws of the United States" by persons acting under color of law (emphasis added). This statute provides for the federal prosecution of government officials who wantonly breach the public trust by unjustly using their authority to deprive others of their constitutional rights.

The Sixth Circuit Court of Appeals incorrectly held that Section 242 does not, however, prohibit a judge from using his state power to sexually assault and rape female court employees and litigants. Specifically, the Sixth Circuit erroneously reasoned that Judge Lanier could not be prosecuted under Section 242 for such egregious abuses of power because this Court had not previously declared in an identical fact situation that sexual assault by a state actor under color of law violates due process and, therefore, was not a constitutional right that had been "made specific" within the meaning of *Screws v. United States*, 325 U.S. 91 (1945).

To the contrary, decisions of this Court as well as lower federal courts have long "made specific" within the meaning of *Screws* both the right to bodily integrity guaranteed by the Constitution and the fact that this constitutional guarantee

includes the right to be free from one of the most intrusive and repugnant forms of physical violation -- sexual assault. Decisions of this Court have consistently recognized the overriding importance of a constitutional right to bodily integrity. In the past century, this Court has repeatedly found the right to bodily integrity violated by, for example, the unwanted administration of medical procedures, the forcible administration of a "stomach pumping" solution to recover evidence swallowed by an arrestee and a court order requiring a female plaintiff in a civil tort action to submit to a surgical examination. *Cruzan v. Director, Missouri Dep't of Health*, 497 U.S. 261 (1990); *Rochin v. California*, 342 U.S. 165 (1952); *Union Pacific Ry. v. Botsford*, 141 U.S. 250 (1891). This Court's precedent thus has made clear that acts of violence committed by state officials acting under color of law analogous to those committed by Judge Lanier violate the victims' constitutional right to bodily integrity. Lower federal courts have also consistently upheld convictions of officials like Judge Lanier who perpetrate sexual assaults while acting under color of law. *See United States v. Davila*, 704 F.2d 749 (5th Cir. 1983); *United States v. Contreras*, 950 F.2d 232 (5th Cir. 1991), *cert. denied*, 504 U.S. 941 (1992). Accordingly, respondent was on notice at the time he sexually assaulted and orally raped women having business with his court that his actions were punishable under 18 U.S.C. 242. If the Sixth Circuit's order dismissing the charges against respondent were allowed to stand, the federal government's power to prohibit state officials from violating the constitutional rights of the women they are supposed to serve would be severely and unjustifiably limited.

STATEMENT

Respondent, former Tennessee Chancery Court Judge David W. Lanier, a member of a local politically prominent family whose brother was the state prosecutor for the area, was convicted of seven criminal counts under 18 U.S.C. 242 for sexually assaulting five women in his chambers during ordinary business hours -- once while wearing his judicial robe. Each of the victims was in respondent's chambers as a court system employee, as an applicant for such a post or as a litigant over whom respondent had continuing jurisdiction. Respondent was the only Chancellor and juvenile court judge in Dyer and Lake Counties; all employees of the two courts held their positions at his discretion.

One sexual violation committed by respondent was on a woman who was both a prospective court employee and former litigant before respondent's court in a child custody matter. Respondent first perpetrated forcible oral rape on her when she visited his chambers seeking employment. Before violating her, respondent told her that the custody matter could be reopened and reminded her that he would be the presiding judge on its rehearing. Respondent then lured her back to his chambers a second time by claiming that he had another job prospect for her. Mindful of his power over her child custody matter, the victim reluctantly revisited respondent's chambers, where respondent committed forcible oral rape on her again.

Judge Lanier was convicted under 18 U.S.C. 242, sentenced to 25 years in federal prison and fined $25,000. The Sixth Circuit Court of Appeals, in a unanimous opinion, affirmed the trial court's conviction and sentence, holding that the judge's sexual attacks constituted willful deprivations under

color of law of the victims' constitutional "right to bodily integrity." On rehearing, a sharply divided en banc court reversed the original panel's decision and ordered all counts dismissed.

The Solicitor General then filed a petition for a writ of certiorari with this Court, further supported by an additional brief submitted by *amici*, seeking review of the following issues: (1) whether "a defendant may [only] be convicted under 18 U.S.C. 242 for the willful violation of a right secured by the Due Process Clause of the Fourteenth Amendment [if] that right has previously been made specific by a decision of this Court in factually similar circumstances;" and (2) "[w]hether, for purposes of 18 U.S.C. 242, the right secured by the Due Process Clause of the Fourteenth Amendment to be free from interference with bodily integrity by a sexual assault by a state official acting under color of law has been 'made specific,' within the meaning of *Screws v. United States*, 325 U.S. 91 (1945)." On June 17, 1996, this Court granted certiorari.

ARGUMENT

I. The Sixth Circuit's Opinion Improperly Denies Constitutional Protection For Unjustified And Invasive Assaults On Bodily Integrity By State Officials Acting Under Color Of Law

For over a century this Court has consistently recognized the overriding importance of a constitutional right to bodily integrity: "[N]o right is held more sacred, or is more carefully guarded by the common law, than the right of every individual to the possession and control of his own person, free from all

restraint or interference of others, unless by clear and unquestionable authority of law." *Union Pacific Ry. v. Botsford*, 141 U.S. 250, 251 (1891). A long line of decisions by this Court has made clear that the "constitutional interest in liberty . . . [includes] a right to bodily integrity, a right to control one's own person" and the right of a woman "to retain . . . ultimate control over her . . . body." *Planned Parenthood v. Casey*, 505 U.S. 833, 869, 915 (1992); *see also Rochin v. California*, 342 U.S. 165, 173, 174 (1952) (noting the "general requirement" that "states in their prosecutions respect certain decencies of civilized conduct" and avoid "force [that is] so brutal and so offensive to human dignity"); *Ingraham v. Wright*, 430 U.S. 651, 673 (1977) (stating that one of "the historic liberties" the Due Process Clause protects is "a right to be free from . . . unjustified intrusions on personal security"); *Youngberg v. Romeo*, 457 U.S. 307, 315-16, 324 (1982) (stating that "a right to freedom from bodily restraint" is not only "clear in the prior decisions of this Court," but has "always . . . been recognized as the core of the liberty protected by the Due Process Clause from arbitrary governmental action") (citation and quotations omitted); *Cruzan v. Director, Missouri Dep't of Health*, 497 U.S. 261, 278 (1990) (O'Connor, J., concurring) ("state incursions into the body [are] repugnant to the interests protected by the Due Process Clause").

Specifically, this Court has found the right to bodily integrity to be violated by the unwanted administration of medical procedures (*Cruzan*, 497 U.S. 261), the forcible administration of a "stomach pumping" solution to recover evidence swallowed by an arrestee (*Rochin*, 342 U.S. 165), the unreasonable use of bodily restraints on an institutionalized

patient in a state mental hospital (*Youngberg*, 457 U.S. 307), the unreasonable administration of corporal punishment on public school students (*Ingraham*, 430 U.S. 651), the placement of certain restrictions on abortion (*Casey*, 505 U.S. 833) and a court order requiring a female plaintiff in a civil tort action to submit to a surgical examination (*Botsford*, 141 U.S. 250).

Drawing on this precedent, lower federal courts have likewise affirmed convictions under Section 242 for the commission of sexual assaults by government officials acting under color of law. Indeed, until this case, federal courts have consistently upheld convictions obtained under 18 U.S.C. 242 for sexual assaults perpetrated under color of law. *See United States v. Davila*, 704 F.2d 749 (5th Cir. 1983) (unanimously affirming convictions of Border Patrol Officers who used their office to coerce sex from and sexually abuse undocumented women); *United States v. Contreras*, 950 F.2d 232, 236 (5th Cir. 1991) (affirming conviction under Section 242 of police officer who sexually assaulted an undocumented woman whom he had detained following a traffic stop), *cert. denied*, 504 U.S. 941 (1992).[1]

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[1] In applying 42 U.S.C. 1983, "the civil counterpart" to Section 242, (*United States v. Price*, 383 U.S. 787, 795 n.7 (1966)), federal courts have also consistently held that sexual assaults committed by state actors under color of law violated the victims' constitutional right to bodily integrity. *See, e.g., Doe v. Taylor Independent Sch. Dist.*, 15 F.3d 443, 451 (5th Cir.) (en banc), *cert. denied*, ___ U.S. ___, 115 S. Ct. 70 (1994); *Dang Vang v. Vang Xiang X. Toyed*, 944 F.2d 476, 479 (9th Cir. 1991); *Stoneking v. Bradford Area Sch. Dist.*, 882 F.2d 720, 726-27 (3d Cir. 1989) (en banc), *cert. denied*, 493 U.S. 1044 (1990); *Hall v. Tawney*, 621 F.2d 607, 613 (4th Cir. 1980). Although decided under a different statute, these cases are nonetheless persuasive here because "[t]he protections of the Constitution do

Department of Justice statistics further evidence the federal courts' longstanding recognition that sexual assault committed under color of law is a civil rights deprivation punishable under Section 242. Since 1989, at least 17 judges, police officers, correctional officers and border patrol agents have been prosecuted and sentenced under Section 242 for improperly using their positions to rape and sexually assault women in their community. *See* Appendix at A-1 through A-6. Two other judges beside respondent have been sentenced for committing sexual assaults under color of law in violation of Section 242. *Id.* at A-1. They both pled guilty to the charges levelled against them, even though the assault perpetrated by one of them was less physically intrusive than the forcible rape committed by respondent. *See* Twila Decker, *Ex-Magistrate Admits Fondling*, THE STATE (Columbia, S.C.), Nov. 7, 1995, at B1 (former magistrate who, while he was still a judge, fondled the breast of a woman who had come to him for legal help, pled guilty to a one-count information charging a violation of 18 U.S.C. 242). The legislative branch has likewise recognized sexual assaults committed by public officials under color of law to be proscribed by 18 U.S.C. 242: in the Violent Crime Control and Law Enforcement Act of 1994 Congress enhanced the punishment for crimes of sexual violence prosecuted under Section 242. *See* Pub. L. No. 103-322, § 320103(b)(3), 108 Stat. 2109.

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not change according to the procedural context in which they are enforced -- whether the allegation that constitutional rights have been transgressed is raised in a civil action or in a criminal prosecution, they are the same constitutional rights." *United States v. Reese*, 2 F.3d 870, 884 (9th Cir. 1993), *cert. denied*, ___ U.S. ___, 114 S. Ct. 928 (1994).

Accordingly, at the time respondent sexually assaulted women in his judicial chambers, the constitutional right to bodily integrity had been "made specific" within the meaning of *Screws v. United States*, 325 U.S. 91 (1945). It is not necessary for this Court to specifically determine, based on an identical factual situation, that a sexual assault by a state actor under color of law violates due process before respondent's blatant violations of women's civil rights may be punished. This Court has determined that less invasive actions perpetrated by state officials under color of law -- such as the unreasonable use of bodily restraints and corporal punishment -- violate an individual's constitutional right to bodily integrity. It is axiomatic, then, that sexual assault by state officials acting under color of law also violates the victims' constitutional right to bodily integrity. Sexual assault is one of the most brutal and invasive methods of violating a person's bodily integrity -- a method of violation which, it is well-documented, causes victims to suffer not only immediate, intense trauma but also profound and lasting psychic injury. *See* Steven Bennett Weisburd & Brian Levin, *"On The Basis of Sex": Recognizing Gender-Based Bias Crimes*, 5 STAN. L. & POL'Y REV. 21, 30-31 (1994); *Brief Amici Curiae of NOW Legal Defense & Education Fund, et al., in Support of Petitioner* at 17-23. Indeed, the lower courts have readily concluded, based on this Court's precedent, that such sexual assaults deprive a person of his or her constitutional right to bodily integrity. Thus, it was obvious under the prevailing case law that sexual assault committed under color of law offended a "principle of justice so rooted in the traditions and conscience of our people as to be ranked fundamental" and violated the Constitution. *Screws*, 325 U.S. at 95. Anyone in respondent's position should have

known, at the time he committed these assaults, that his actions violated federal law.

Under the Sixth Circuit's rule, no conviction could be final until this Court determined that the individual factual situation presented amounted to a constitutional violation. This would have the unconscionable effect of allowing obvious constitutional violations arising from slightly different factual situations to go unpunished until this Court has had the opportunity to specifically determine that the particular physical intrusion involved violates the Constitution. The state of the law would thus remain perpetually frozen in time, since this Court would be unlikely to encounter the identical set of facts twice.

The Sixth Circuit's en banc holding would have the further anomalous effect of affording greater constitutional protections to prisoners and criminal suspects than to law-abiding citizens. It would mean that a female arrestee would enjoy Fourth Amendment protection from an automatic strip search, but law-abiding women would not be protected from sexual assault by state actors under the Due Process Clause. *See Weber v. Dell*, 804 F.2d 796, 802 (2d Cir. 1986) (holding that, in the absence of a reasonable suspicion that a weapon or contraband is being concealed, the Fourth Amendment precludes strip searches of arrestees on minor charges), *cert. denied*, 483 U.S. 1020 (1987); *accord Chapman v. Nichols*, 989 F.2d 393, 395, 399 (10th Cir. 1993). If the Sixth Circuit's decision is allowed to stand, law-abiding individuals will be entitled to fewer rights than arrestees or convicted felons in federal prisons.

Finally, it would be an anomaly to allow conduct as shocking as respondent's to escape punishment. The primary

purpose of 18 U.S.C. 242 is to redress unconstitutional abuses of state power by public officials. Indeed, as this Court noted in *Screws*, 325 U.S. at 116, "it was abuse of basic civil and political rights, by states and their officials, that the amendment and the enforcing legislation [18 U.S.C. 242] were adopted to uproot." *See also Daniels v. Williams*, 474 U.S. 327, 331 (1986) ("The touchstone of due process is protection of the individual against arbitrary action of government . . . . [It] serves to prevent governmental power from being used for purposes of oppression.") (citations and quotations omitted). Unconstitutional abuses of state power may manifest themselves in a myriad of ways. *See, e.g.*, *United States v. Stokes*, 506 F.2d 771, 775 (5th Cir. 1995) (holding that police officer violated arrestee's due process "right to be free from unlawful assault by state law enforcement officers" by severely beating him while he was in custody at the police station); *Shillingford v. Holmes*, 634 F.2d 263, 265 (5th Cir. 1981) (holding that a police officer violated the due process right of a tourist "to be free of state-occasioned damage to [his] bodily integrity" by striking him with a nightstick when he attempted to photograph the officer making an arrest). Recognizing this, Congress broadly worded both Section 242 and its companion conspiracy statute (18 U.S.C. 241) to ensure that the full range of governmental abuses giving rise to constitutional violations would be punished. *Cf. United States v. Price*, 383 U.S. 787, 801 (1966) ("[T]he events from which [Section 241] emerged illuminate the purpose and means of the statute in an unmistakable light. We [therefore] *must accord it a sweep as broad as its language*.") (emphasis added); *accord United States v. Johnson*, 390 U.S. 563, 566 (1968).

Respondent used his leverage as a judge to extort, intimidate and sexually assault his victims. He threatened them with loss of their jobs and, in the case of one victim, custody of her child, if they did not submit to his demands. Moreover, these blatant and shocking displays of abuse of state power -- two forcible oral rapes and numerous sexual assaults -- were all committed in respondent's judicial chambers, the seat of his judicial power.[2] Respondent was more than incidentally a state actor when he engaged in his criminal conduct. Respondent assaulted, in his judicial chambers, past and potential litigants before his court. He even committed one assault while wearing his judicial robe. This is exactly the type of gross abuse of state power that Section 242 was designed to protect against.

II. The Federal Government Has A Significant Interest In Prosecuting Violent, Unconstitutional Assaults Against Women, Particularly Where, As Here, State Remedies May Be Inadequate

The federal government has a significant and longstanding interest in redressing violations of the Constitution. Indeed, acts like the ones perpetrated by respondent,

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[2] Rape itself "undermines the community's sense of security," as well as the individual victim's, thereby causing "public injury." *Coker v. Georgia*, 433 U.S. 584, 598 (1977). Respondent's added use of the power of his public office to sexually violate members of the community makes his crimes even more reprehensible, since such a flagrant misuse of state office serves to shake the public trust in the country's democratic and legal institutions.

> which squarely and indisputably involve state action in direct violation of the mandate of the Fourteenth Amendment . . . [are] a direct, traditional concern of the Federal Government. It is an area in which the federal interest has existed for at least a century, and in which federal participation has intensified as part of a renewed emphasis on civil rights.

Price, 383 U.S. at 806. Congress has shown a similar commitment to protecting the civil rights of women, as demonstrated most recently by its enactment of the Violence Against Women Act of 1994 (VAWA).[3]

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[3] The United States has also confirmed that it considers sexual assaults against women to constitute human rights violations where state actors participate in the assaults in some way. In 1995, the Immigration and Naturalization Service formally recognized rape, domestic abuse and other forms of violence against women perpetrated by or acquiesced in by government actors to be potential grounds for political asylum. *See* Ashley Dunn, *U.S. to Accept Asylum Pleas for Sex Abuse*, N.Y. TIMES, May 27, 1995, at 1. These INS guidelines specifically provide that the evaluation of gender-based asylum claims must "be viewed within the framework provided by existing international human rights instruments and the interpretation of these instruments by international organizations." *Fisher v. INS*, 79 F.3d 955, 967 (9th Cir. 1996) (en banc) (Norris, J., dissenting) (quoting INS guidelines). The guidelines refer to a human rights convention that took place a decade before respondent assaulted his victims, the 1979 Convention on the Elimination of All Forms of Discrimination Against Women. The guidelines also mention the 1993 Declaration on the Elimination of Violence Against Women, adopted by the General Assembly of the United Nations, which officially recognizes violence against women "as both a per se violation of human rights and as an impediment to the enjoyment by women

Like other civil rights statutes before it (including Section 242), VAWA was enacted to stem a rising tide of violence against a distinct class of individuals,[4] ensure equal protection of the laws and rectify biases in existing state laws.

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of other human rights." *Id.* (quotations and citation omitted).

It would indeed be "passing strange" (*United States v. Lanier*, 73 F.3d 1380, 1399 (6th Cir. 1996) (Nelson, J., dissenting)) if the United States were to condemn as human rights violations sexual assaults perpetrated against women by other countries' officials but yet, like the Sixth Circuit, fail to recognize that the same type of violence committed against women in this country similarly gives rise to a civil rights violation.

[4] Recent studies confirm that violence against women remains pervasive. According to the most recent statistics from the U.S. Department of Justice's Bureau of Statistics, in 1993 and 1994, women over the age of twelve annually sustained approximately 5 million violent victimizations (most often, sexual assaults and forcible rapes), 60 percent of which were perpetrated, as in the instant case, by offenders whom the victim knew. *See Prepared Statement of Janet Reno, Attorney General, Before the Senate Committee on the Judiciary Concerning the Violence Against Women Act*, 1996 WL 5512565 *4 (May 15, 1996). The newly published report, UNDERSTANDING VIOLENCE AGAINST WOMEN ("VIOLENCE REPORT"), by THE NATIONAL RESEARCH COUNCIL PANEL ON RESEARCH ON VIOLENCE AGAINST WOMEN, similarly reflects that the average annual rate of violent victimization for young women aged 12-18 is approximately 75 per 1000. VIOLENCE REPORT at 32. According to the report, women of all ages, races and geographic locations are most likely to suffer violence at the hands of a male assailant who is known to them (either an acquaintance, friend or intimate). *Id.* at 29-32. Study findings variously estimate that between 20 and 50 percent of all women will be victims of sexual assault in their lifetime (*id.* at 32); significantly fewer will suffer sexual violence at the hands of a state actor like the victims here, however.

See S. REP. NO. 138, 103d Cong. 1st Sess. 57-58, 68 (1993). Among other protections, VAWA provides an additional remedy -- over and above those already provided for in existing civil rights law -- to victims of gender-based violence. *See* 42 U.S.C. 13981; S. REP. NO. 138, 103d Cong. 1st Sess. 67 (1993) ("This legislation is in no way intended to undermine existing civil rights protections. . . . It should be read in harmony with, not in derogation of, those provisions.").[5]

The federal government's interests in enforcing rights guaranteed under the Constitution and redressing violence against women are heightened in cases such as this where potentially overlapping state remedies may be unavailable. Indeed, "one reason [Section 242] was passed was to afford a federal right in federal courts because, by reason of prejudice, passion, neglect, intolerance or otherwise, state laws might not be enforced and the claims of citizens to the enjoyment of [Fourteenth Amendment] rights, privileges and immunities . . . might be denied by the state agencies." *Monroe v. Pape*, 365

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[5] As the legislative history reflects, this remedy is "truly a [classic] civil rights remedy. It redresses conduct that is motivated by bias or hatred toward a class of individuals because of a defining characteristic -- gender." *Crimes Of Violence Motivated By Gender: Hearings On H.R. 113, The Violence Against Women Act of 1993, Before The Subcomm. on Civil and Constitutional Rights of The House Comm. on The Judiciary*, 103d Cong., 1st Sess. 101-02 (1993) (statement of James P. Turner, Acting Assistant Attorney General, Civil Rights Division, U.S. Department of Justice). *Cf.* Weisburd & Levin, *Recognizing Gender-Based Bias Crimes*, 5 STAN. L. & POL'Y REV. 21 (1994) (arguing that the recognition of gender as a distinct category of bias crime -- and another form of criminal civil rights violation -- would further assist in remediating violent, status-based deprivations of women's civil rights).

U.S. 167, 179 (1961); *see also* S. REP. No. 138, 103d Cong. 1st Sess. 68 (1993) (noting in the legislative history of VAWA that "[u]nder the 14th Amendment, there is no clearer case of Congress's power to legislate than when States have failed to protect equal rights."). Section 242 has often been used to bring abusive state officials like Judge Lanier to justice where, as here, a state court prosecution would be difficult. *See, e.g.*, Lucy Morgan, *Bill Targets Law Officers Who Use Authority to Demand Sex*, ST. PETERSBURG TIMES (Fla.) April 19, 1995, at 1B (noting that, according to the Florida State Attorney, a correctional officer convicted under Section 242 for forcing at least a dozen female inmates to repeatedly perform oral sex on him was not prosecuted under state law because "a prosecution under state law would have been more difficult"); HUMAN RIGHTS WATCH WOMEN'S RIGHTS PROJECT, THE HUMAN RIGHTS WATCH GLOBAL REPORT ON WOMEN'S HUMAN RIGHTS, 164, 165, 176 (1995) (documenting cases nationwide of male corrections officers and nonsecurity prison staff sexually assaulting and raping female prisoners; noting that "although U.S. law offers female prisoners some protections from sexual misconduct by officers, these protections are inconsistent across states and their enforcement . . . has been woefully inadequate;" and concluding that "states prosecute very few cases of sexual intercourse or sexual touching between officers and prisoners. The majority of . . . States . . . have no criminal law that deals directly with this abuse and those that do often decline fully to enforce such prohibitions."). Here, the stranglehold respondent and his family had on local state politics protected him from being prosecuted by the state for his crimes. (His family was not only politically prominent in the county, but his brother was the local prosecutor.) Prosecution

by the federal government therefore remained the only way to bring respondent to justice.[6]

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[6] Even if his family's political power had not precluded respondent from being prosecuted under state law, the fact remains that this is the type of case federal civil rights law was intended to address. *See Monroe*, 365 U.S. at 183. ("The federal remedy is supplementary to the state remedy, and the latter need not be first sought and refused before the federal one is invoked.")

CONCLUSION

For the foregoing reasons, *amici* urge that the decision of the Sixth Circuit Court of Appeals be reversed.

Respectfully submitted,

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APPENDIX

ADDITIONAL CRIMINAL CIVIL RIGHTS PROSECUTIONS BROUGHT AGAINST GOVERNMENT OFFICIALS FOR SEXUAL ASSAULTS UNDER COLOR OF LAW
1989-1996

Assaults by Judges

U.S. v. Lee (11/6/95) (D. S.C.)

The former state magistrate in Horry County pled guilty to sexually assaulting a vulnerable woman who had come to him for legal advice.

U.S. v. Morris (1/19/95) (N.D. Miss.)

An Alcorn County justice pled guilty to sexually assaulting a woman during the course of a discussion with her regarding legal matters. He was sentenced to six months home detention, three years probation and fined $3,000.

Assaults by Police Officers

U.S. v. Contreras (5/31/90) (S.D. Tex.)

A Laredo Police Department officer was sentenced to 61 years in prison and fined $250,000 for his conviction of raping a Mexican woman while he was on duty and

conspiring to murder her when she was to testify against him in connection with his state trial.

U.S. v. Gregg (5/30/90) (D. V.I.)

A Virgin Islands Department of Public Safety officer pled guilty to sexually assaulting an individual whom he had stopped for a traffic violation. He was sentenced to three months in prison and two years probation.

U.S. v. Jackson & George (7/14/92) (D. V.I.)

Two Virgin Islands Department of Public Safety officers were convicted of sexually assaulting a woman and stealing money from a man whom they had driven to a remote area. Jackson was sentenced to 70 months in prison; George was sentenced to six months imprisonment, fined $5,000 and ordered to pay $608 in restitution.

U.S. v. Pich (8/3/93) (N.D. Ill.)

A North Riverside police officer was sentenced to a year probation and agreed to resign from law enforcement after pleading guilty to providing a false statement to the FBI regarding his having consensual sex with a woman being detained by INS at the local jail.

U.S. v. Sanchez (3/29/94) (S.D. Tex.)

A Galveston police officer was sentenced to 15 years in prison and fined $1,000 along with $175 in special

assessments after being convicted of coercing five women into engaging in sexual acts with him and physically assaulting one of them. In January 1996, the Fifth Circuit Court of Appeals reversed his conviction and remanded for a new trial, ruling that the district court had abused its discretion in impaneling an anonymous jury. In April 1996, defendant Sanchez pled guilty to five misdemeanor charges for coercing women to engage in sexual acts with him while on duty as a Galveston police officer.

Assaults by Border Patrol and Correctional Officers

U.S. v. Clendenen (5/18/92) (W.D. Va.)

A Washington County correctional officer was sentenced to 37 months in prison and ordered to pay $14,933 in restitution after pleading guilty to charges arising from his coercing inmates into sexual encounters in exchange for drugs and privileges.

U.S. v. Foote (8/28/90) (D. Ariz.)

The defendant, a detention officer of the Bureau of Indian Affairs, was charged in a 13-count indictment in the sexual assault of Indian women during their incarceration in a BIA jail in Peach Springs, Arizona. He was sentenced to two years in prison followed by two years of supervised release.

U.S. v. Harrison (11/16/94) (N.D. Fla.)

A Gulf County Sheriff was convicted of using his position as sheriff to coerce five female inmates at the Gulf County Jail to engage in sexual acts with him. He was sentenced to 51 months imprisonment to be followed by one year of supervised release.

U.S. v. Huff (1/9/92) (S.D. W.Va.)

A Wayne County probation officer pled guilty to having sex with a female probationer whom he threatened to send to jail if she did not comply. He was sentenced to 20 months imprisonment.

U.S. v. Perales (8/24/89) (S.D. Tex.)

An INS detention officer was sentenced to ten months in prison for his guilty plea to a sexual assault of Mexican juveniles who were being detained.

U.S. v. Ramirez (10/11/89) (S.D. Tex.)

A Plant Protection and Quarantine Officer with the Animal and Plant Health Inspection Service of the Department of Agriculture was sentenced to two years probation and fined $250 for his guilty plea to sexually assaulting female Mexican nationals crossing the border from Mexico into the United States.

U.S. v. Selders (4/5/95) (D. Ariz.)

A Border Patrol agent in Nogales pled guilty to sexually assaulting a female victim after detaining her for illegally entering the country. He was sentenced to 12 months in prison and three years probation.

U.S. v. Smith (4/20/95) (E.D. Ky.)

A correctional officer at the Federal Medical Center in Lexington was sentenced to 262 months in prison to be followed by three years supervised release after being convicted of sexually assaulting three female inmates and having sexual relations with a fourth female inmate.

U.S. v. Toothman (11/4/94) (S.D. Cal.)

An inspector with the Immigration and Naturalization Service was indicted for sexually assaulting a foreign national who was appealing the confiscation of her border crossing card. After the assault, the defendant returned the victim's border crossing card to her and offered to obtain border crossing cards for her children if she agreed to see him again.

U.S. v. Walsh (1/4/96) (W.D. N.Y.)

A correctional officer with the Orleans County Jail was indicted for stomping on the penis of an inmate. Another correctional officer witnessed the incident.

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U.S. v. Wescogame (12/6/93) (D. Ariz.)

An officer with the Bureau of Indian Affairs pled guilty to raping a young Indian woman when she was being detained at a BIA detention facility. He was sentenced to 30 months in prison.

Source: *U.S. DEPARTMENT OF JUSTICE, CIVIL RIGHTS DIVISION, CRIMINAL SECTION.*